

A CITES PRIORITY:

## **PATAGONIAN TOOTHFISH AND ANTARCTIC TOOTHFISH AT THE TWELFTH MEETING OF THE CONFERENCE OF PARTIES TO CITES, SANTIAGO, CHILE 2002**

**TRAFFIC AND WWF BRIEFING DOCUMENT  
OCTOBER 2002**

**AT THE TWELFTH MEETING OF THE CONFERENCE OF THE PARTIES TO CITES (COP12), PARTIES WILL CONSIDER PROPOSALS TO LIST PATAGONIAN TOOTHFISH *DISSOSTICHUS ELEGINOIDES* AND ANTARCTIC TOOTHFISH *D. MAWSONI* IN CITES APPENDIX II. IF ACCEPTED BY THE PARTIES, THE LISTINGS WOULD ASSIST IN COMBATING THE ILLEGAL, UNREPORTED AND UNREGULATED (IUU) FISHING CURRENTLY TARGETING THE PATAGONIAN TOOTHFISH. IUU FISHING HAS ALREADY SERIOUSLY DEPLETED SEVERAL STOCKS AND IS THREATENING THE SUSTAINABILITY OF THE LEGITIMATE FISHERY. THE ANTARCTIC TOOTHFISH HAS BEEN PROPOSED OWING TO ITS SIMILARITY OF APPEARANCE TO THE PATAGONIAN TOOTHFISH.**

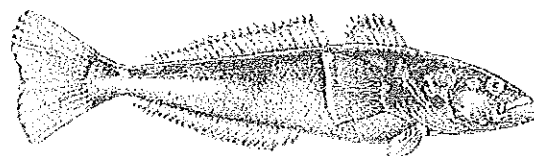
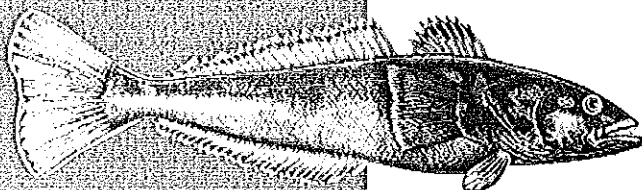
The Patagonian Toothfish is a large, demersal, predatory sub-Antarctic species that grows up to two metres in length, lives for up to 50 years and inhabits depths down to 3000 metres. The Patagonian Toothfish is circumpolar in its distribution. The northern limit for most Patagonian Toothfish is 45°S, although the species is found further north along the coastline of South America in deep, cold water. Patagonian Toothfish is highly prized for its restaurant-quality, white flesh in markets such as the USA, Europe, Japan and, increasingly, mainland China, and may sell for up to USD35 per kilogramme at retail outlets. Patagonian Toothfish are caught mainly by large, industrial fishing vessels in sub-Antarctic waters, although some fishing by smaller vessels occurs in the coastal waters of Chile. Over 90% of toothfish products enter into international trade.

Antarctic Toothfish are visually similar to Patagonian Toothfish as whole fish and visually indistinguishable in processed form. Like the Patagonian Toothfish, the Antarctic Toothfish is a demersal species, inhabiting waters from 300 to 2500 metres deep. Antarctic Toothfish inhabit higher latitudes than Patagonian Toothfish and are generally restricted to waters above 65°S. Antarctic Toothfish and Patagonian Toothfish products are not discriminated in the market place.

Why have toothfish been proposed for listing in Appendix II? What's the problem?

The Patagonian Toothfish has been proposed for Appendix II listing to assist in combating the IUU fishing currently targeting the species. The Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), which manages the toothfish fishery within its Convention Area, has recognised that IUU fishing has caused a significant decline of toothfish populations in certain areas and is one of the biggest challenges faced by the Commission. Although there is some debate over the accuracy of different estimates of IUU fishing, it is widely agreed that IUU fishing continues to undermine the biological sustainability of toothfish.

According to CCAMLR figures, the estimated IUU catch within its Convention Area in the split year 2000/01 represented 39 % of the estimated total catch of toothfish. In the previous year, the estimated



**Common names for toothfish  
in the major markets:**

Spain: Merluza negra (Black cod) or  
Bacalao de profundidad

USA &  
Canada: Chilean Sea Bass

France: Legine

Japan: Mero

UK: Patagonian Toothfish

Chilean Seabass



B. Waters

IUU catch of toothfish was 6546 tonnes or 32 % of the estimated total catch (Report of the CCAMLR Scientific Committee 2001). It should be noted that analyses undertaken by TRAFFIC of trade in toothfish up to the year 2000 indicated that CCAMLR's estimates are likely to underestimate the level of unreported catch significantly (see TRAFFIC report *Patagonian toothfish: Are conservation and trade measures working?* / [www.traffic.org](http://www.traffic.org)).

Declines in toothfish stocks targeted by IUU fishing fleets have been both quick and severe. For example, in only a few years, illegal fishing in the waters around South Africa's Prince Edward Islands depleted that spawning stock biomass to only a few percent of the pre-exploitation level. Illegal catch of toothfish taken from waters under Australian jurisdiction over the split-year 2000/01 was estimated to be 55 per cent of the legal total allowable catch. The Australian Government has advised that estimates of total illegal catch from its waters for the split-year 2001/02 will be higher.

In addition to IUU fishing activity within the CCAMLR Convention Area, unregulated fishing for toothfish occurs in high seas areas outside the Convention Area. There are currently no conservation and management measures in place for toothfish to control the level of catch that can be harvested from these areas. There is, however, agreement by CCAMLR Member State and co-operating non-parties ("Acceding States") to apply certain CCAMLR management measures in these waters.

#### What are the current conservation and management measures for toothfish?

CCAMLR was established in 1982 and since that time has developed a comprehensive set of conservation and management measures for species within its Convention Area (generally south of the Antarctic Convergence at between 45°S and 60°S). These measures include specific regulations relating to Patagonian and Antarctic Toothfish, such as a Catch Documentation Scheme (CDS) designed to monitor and control trade in toothfish and total allowable catch limits for toothfish harvested from its Convention Area, based on advice from its Scientific Committee. Measures developed and agreed by CCAMLR are binding on its 24 Member States. Coastal States within whose waters toothfish occur also apply management controls over the harvesting of toothfish in their waters. In relation to high sea areas outside the CCAMLR Convention Area, there are generally no controls on fishing for Patagonian Toothfish except for the application of CCAMLR requirements relating to the CDS by CCAMLR Member States and co-operating Acceding States.

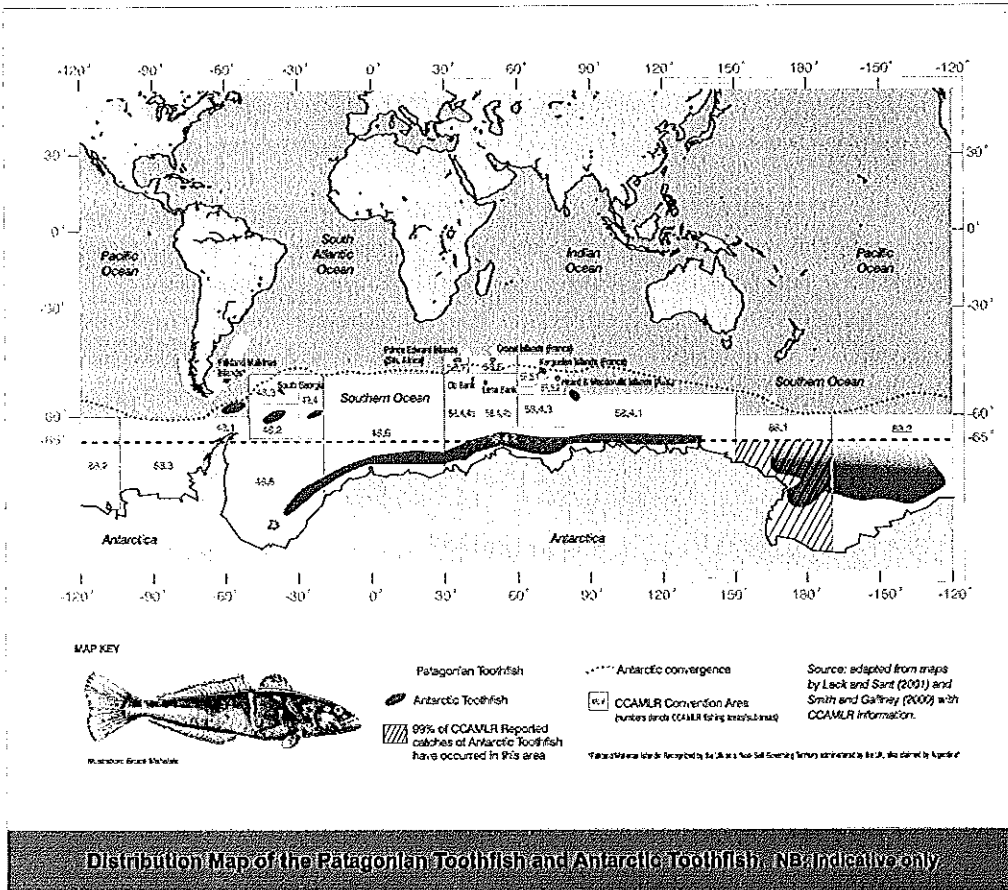
The introduction by CCAMLR of the CDS, with its reliance on port and market State enforcement, is particularly important in considering the proposal to list Patagonian and Antarctic Toothfish in Appendix II of CITES. It is evidence of recognition by CCAMLR Member States that fisheries conservation and management measures designed to control the activities of vessels while they are at sea need to be complemented by trade-related measures to ensure effective conservation of toothfish.

#### Why aren't the current measures working?

The reasons why the current conservation and management measures need to be further strengthened can be grouped into two main areas:

1. *Not all countries involved in the harvest and trade of toothfish are Member States of CCAMLR or voluntarily co-operate with CCAMLR's conservation measures*

Only the 24 Members of CCAMLR are bound by its agreed measures although the seven Acceding States to the Convention generally also apply these measures. The Commission encourages non-parties whose vessels



Distribution Map of the Patagonian Toothfish and Antarctic Toothfish. NB Indicative only

- A CCAMLR member may implement and enforce agreed conservation measures in a number of ways:**
- FLAG STATE**  
Exercise effective flag State control over its fishing vessels, particularly when fishing on the high seas
  - COASTAL STATE**  
Exercise effective control over fishing activities for toothfish within waters under its national jurisdiction
  - PORT STATE**  
Control fisheries-related activities in its ports, particularly transshipment of catches, and validation of required catch documentation
  - MARKET STATE**  
Ensure that toothfish imports are accompanied by the appropriate documentation
  - NATIONAL'S STATE**  
Implement measures to deter its nationals from engaging in activities that undermine agreed conservation measures for toothfish

fish for toothfish on the high seas of the Convention Area to either accede to the Convention or voluntarily apply CCAMLR's measures. However, many such vessels fly what is termed a 'flag of convenience'. Flag of convenience vessels are generally considered to be those that are registered in a different country to that where the ship is beneficially owned. Vessel owners are attracted by the opportunity offered by such registration to avoid higher costs in their own countries, including insurance and taxes, and in some cases by the lack of flag State control exercised over vessels' activities. The result is that the fishing activity by these vessels is largely unregulated within the Convention Area and adjacent high seas. If a flag State was to begin to regulate vessels' activities, in response to CCAMLR's requests, it is highly likely that the vessel owners would simply register their vessels under a different flag.

CCAMLR also encourages non-parties that provide port facilities and/or markets for toothfish to implement the provisions of the CDS or accede to the Convention voluntarily. To date, such approaches have had some success, with Singapore, the Seychelles and Mauritius all committing to implement the CDS on a voluntary basis and Namibia becoming a Member of the Commission in 2000. The decision by Mauritius was particularly significant as the Mauritian capital, Port Louis, has been a primary port for the unloading of toothfish caught by IUU vessels for a number of years. However, as with the flag of convenience vessels, in response to a port State implementing CCAMLR's CDS measures, IUU operators have sought out port States that have no such measures in place.

**Chilean Seabass on sale in Belgium**



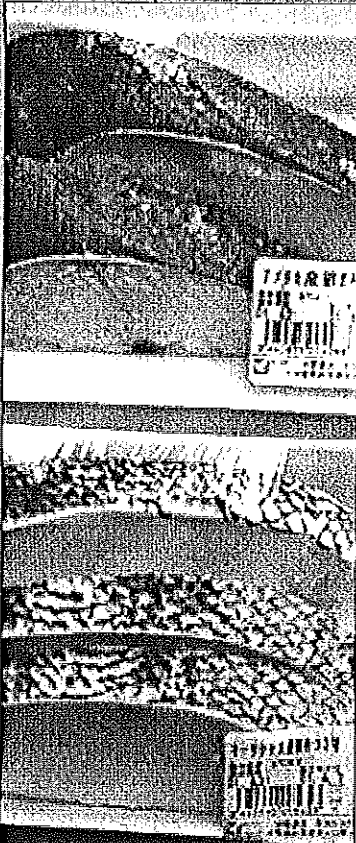
## 2. Patagonian Toothfish occur in high sea areas outside the CCAMLR Convention Area

The introduction of the CDS in May 2000 has resulted in an increase in the amount of catch reported as taken on the high seas outside the Convention Area, particularly in FAO Statistical Area 51, which covers the entire western and southern Indian Ocean to the north of the CCAMLR Convention Area.

In the year 2000/01, CDS data recorded a total of 30,151 tonnes as having been taken outside the Convention Area. This was nearly triple the amount reported as having been taken in these areas the previous year; that is, prior to the implementation of the CDS. Almost one-third of that catch was reported as having been taken in FAO Statistical Area 51 by both CCAMLR Members and non-Contracting Parties. The accuracy of these reports is highly suspect as scientific information has not identified any stocks of toothfish in this area that would support the level of reported catch. More explicitly, at its most recent meeting in 2001, CCAMLR's Scientific Committee stated in its report to the Commission that '...practically all the toothfish catches reported from Area 51 represent catches taken as a result of IUU fishing in other areas inside the Convention Area.'

There are clear incentives to misreport catch as having been taken on the high seas outside the CCAMLR Convention Area. First, there are no limits on the amount of toothfish that can be declared as having been taken there, unlike in the Convention Area where total allowable catch controls on toothfish apply. Operators can also avoid other conservation measures, including the requirement for CCAMLR Member vessels to carry an automatic location device under the vessel monitoring system. Further, catches that have been illegally taken from the waters of coastal States can be misreported as having been taken on the high seas outside the Convention Area. Where the flag State of the IUU vessel does not exercise adequate control over its vessels' fishing activities, catches can also be laundered under CCAMLR's CDS and flow through into trade with the correct documentation. Both vessels flagged to CCAMLR Members and non-Contracting Parties have declared catches from the high seas outside the Convention Area, including from Statistical Area 51.

Black cod (top) and Patagonian Toothfish on sale in Japan.



CCAMLR has recognised the problems presented by the limits of its Convention Area. At their annual meeting in October 2001, CCAMLR Members adopted a resolution on this issue in which they expressed concern that the CDS could be used to disguise IUU catches of toothfish in order to gain legal access to markets. The resolution states Members' concern that '...any misreporting and misuse of the CDS seriously undermines the effectiveness of CCAMLR conservation measures.' The entry into the market place of toothfish caught by IUU fishing activity also competes with sales from legitimate fishers. As IUU fishing operations generally have lower costs than those of legitimate operators, in the face of falling catch rates IUU fishers are able to maintain their fishing effort beyond a point where it becomes uneconomic for legitimate operators to continue fishing.

CCAMLR has taken steps to reduce the potential for IUU catch to be laundered through the CDS. However, there is no obligation for port States to verify where catch was taken as this is considered to be the responsibility of flag States. Although some port States may apply more stringent requirements on the basis of the resolution adopted at CCAMLR's annual meeting in 2001, this is voluntary. Therefore, as acknowledged by CCAMLR, misreporting can lead to laundering of illegal catches through the CDS in circumstances where the flag State is not undertaking effective verification and validation of catches and the port State does not itself require such verification.

### Can CCAMLR alone effectively address the current problems impacting toothfish conservation?

There are clear weaknesses in the current conservation regime for toothfish that continue to undermine its long-term sustainability. CCAMLR has stated that '... the continuation of IUU fishing could reduce

toothfish stocks to levels from which they cannot recover' (CCAMLR 2001c). Therefore the key question is whether CCAMLR alone can effectively address the weaknesses of the current conservation regime within a timeframe that can prevent this outcome.

At the forthcoming 21st meeting of CCAMLR, in October 2002, Commission Members will consider a number of measures to further strengthen the current conservation regime for toothfish. Such measures will include a centralised system to monitor the location of Member vessels fishing for toothfish within the Convention Area and options for extending the Commission's jurisdiction over toothfish throughout their known range in high sea areas. However, the complex processes required for CCAMLR to extend its mandate to cover both vessels and areas beyond its current jurisdiction, and thereby address the weaknesses identified, is unlikely to take place within a short timeframe. Further, any efforts that do not include specific attention on the part of importing States to ensuring the legality of products in trade, regardless of CCAMLR membership, are unlikely to succeed in the foreseeable future.

As recognised by CCAMLR, co-operation of both Members and non-parties fishing for, or engaged in the trade of, toothfish is critical to the effectiveness of the conservation regime for toothfish. Efforts to date to ensure such co-operation have met with some success, but have fallen short of removing the immediate threat posed by IUU fishing to the long-term sustainability of toothfish stocks.

Given this, the question is then whether other international conservation measures can be brought to bear to support CCAMLR in this regard.

#### Can CITES be used to complement CCAMLR measures?

Over 90% of Patagonian Toothfish and Antarctic Toothfish products enter international trade. CCAMLR has recognised the importance of monitoring and controlling trade in toothfish and has already taken steps towards this. However the effectiveness of the CCAMLR controls is limited by the weaknesses identified above.

Further strengthening of the monitoring and control of this trade would be a significant step in strengthening other fisheries management measures. CITES has the capacity to assist through an Appendix II listing. As the international instrument with the mandate to monitor and regulate international trade in wildlife products, CITES has the capacity and, with 160 Parties, the scope of membership to address the key weaknesses in the existing trade controls for toothfish. Depending on the manner of implementation, a CITES Appendix II listing for toothfish could, in effect, result in the global application of CCAMLR's measures relating to the harvest of toothfish for trade. This would mean that only toothfish caught in compliance with CCAMLR management measures, or national measures for fish caught within EEZs, could be traded between the 160 CITES Parties.

#### What needs to be done to make this happen?

The first step in strengthening controls over international trade in Patagonian Toothfish and Antarctic Toothfish products is for these species to be listed in CITES Appendix II at CoP12. This could be achieved by a two-thirds' majority of the CITES Parties present and voting supporting the listing proposal.

A listing of Patagonian Toothfish and Antarctic Toothfish would not be straightforward. A range of implementation issues relating to the application of CITES Appendix II provisions to marine fish species will require consideration. Central among these is the need to establish an efficient and effective relationship between CCAMLR and CITES. Such a relationship would recognise CCAMLR's primary responsibility for the development and implementation of scientific and management measures for

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*Internet links to toothfish  
and CITES related reports*

*Patagonian toothfish/No*

*Conservation and Trade*

*Measures Working? August 2001*

*<http://www.traffic.org/toothfish/>*

*toothfish.pdf*

*Uncharted Waters: Implementation*

*Issues and Potential Benefits of*

*Listing Toothfish in Appendix II of*

*CITES, April 2002*

*<http://www.traffic.org/itw/>*

*unchartedwaters.pdf*

*Antarctic toothfish: An analysis of*

*management, catch and trade*

*October 2001*

*<http://www.traffic.org/antoothpdf/>*

toothfish within its Convention Area and the complementary role of CITES in monitoring and control of international trade in toothfish products.

CCAMLR has well-established research and scientific processes through which it undertakes annual assessments of the status of toothfish and establishes limits on the total amount that can be harvested during the fishing season. These scientific processes would be relied on by CITES Parties in reaching non-detriment findings for toothfish in trade. To facilitate this, CITES Parties could designate CCAMLR as its Scientific Authority for toothfish, or consider it as an international scientific authority, for the purposes of making non-detriment findings for toothfish products introduced from the sea from within the CCAMLR Convention Area.

The question of the relationship between the documents required under the CCAMLR CDS and the certificates and export permits required under CITES is an important one. To avoid the situation whereby two forms of documentation would be required for toothfish products in trade it would be preferable to use a single system of paperwork. There would appear to be no substantial barrier to CCAMLR's CDS documents being designated as CITES certificates and permits (including export and re-export permits) for the purposes of trade in toothfish products in most circumstances.

In relation to catches claimed to have been taken on the high seas outside the CCAMLR Convention Area two issues were identified. First, there is evidence that substantial catches taken within the Convention Area, including from the waters of coastal States, are being misreported as having been taken outside the Area. Second, there is currently no regulatory regime or control over catches of toothfish that are genuinely taken on the high seas outside the Convention Area. For these reasons, no introduction from the sea certificates should be issued in respect of these catches until such time as a basis for non-detriment findings is established.

There are a number of toothfish fisheries that take place within waters under the jurisdiction of States, for example the Chilean artisanal fishery and France's fishery around the Kerguelen Islands. In some cases, such coastal States establish limits on total catch based on the advice and recommendations of the CCAMLR Scientific Committee while other States implement conservation measures developed through their own domestic processes that are compatible with those of CCAMLR. In either case the coastal State would make non-detriment findings for toothfish exported from its waters based on its domestic management measures.

A more detailed analysis of the implementation issues relating to an Appendix II listing of toothfish can be found in the TRAFFIC report *Uncharted Waters: implementation issues and potential benefits of listing toothfish in Appendix II of CITES* ([www.traffic.org](http://www.traffic.org)).

#### Recommendations

The effectiveness, practicality and conservation value of a CITES Appendix II listing for toothfish will depend on the means of implementation, which need to be specified by annotation of the listing and by an accompanying Resolution.

Hauling longlines set for toothfish in the Southern Oceans



*Annotation to the listing*

We recommend that the CITES Parties adopt an annotation to the listing which specifies that:

- CCAMLR is responsible for the development and implementation of scientific and management measures for the conservation and rational use of toothfish within its Convention Area;
- non-detriment findings for international trade in specimens of toothfish caught within the CCAMLR Convention Area, in waters that are not under the jurisdiction of a State, are made on the basis of CCAMLR's conservation measures; and
- entry into force of the listing be delayed by 12 to 18 months to enable a range of technical implementation issues to be resolved.

*Resolution to accompany the listing*

It will be necessary for the Parties to adopt a Resolution that establishes the conditions under which international trade in toothfish should occur within the framework of CITES Appendix II controls. To provide the conservation and management benefits associated with a listing of toothfish in Appendix II, we recommend that such a Resolution address the following points:

- a) co-operation between CITES and CCAMLR in the management of international trade in toothfish should be encouraged
- b) for the purpose of granting introduction from the sea certificates, CCAMLR should be designated as the international scientific authority for these species and the national port authorities currently designated under CCAMLR to validate CDS documents should be designated as the CITES Management Authority for toothfish species
- c) as non-detriment findings would be made on the basis of CCAMLR measures (see "Annotation to the listing"), granting of a certificate of introduction from the sea by the Management Authorities should be conditional upon verification of the location of catches using data from CCAMLR's vessel monitoring system
- d) a system for ensuring complementary practices and avoiding duplication between CCAMLR and CITES documentary requirements should be determined in respect of export and re-export requirements. To the extent possible, this should be based on CDS documentation
- e) high seas outside the CCAMLR Area: in the absence of a multilateral management regime for high sea areas outside the CCAMLR Area, no scientific basis exists to make non-detriment findings for catches of toothfish in these areas. Therefore no introduction from the sea certificates should be issued in respect of such catches until such time as a basis for non-detriment findings is established
- f) catches taken within waters under national jurisdiction: export permits should be granted on the basis of compliance with national management measures.

Freshly caught  
Patagonian toothfish on  
board a longline vessel





B. Watkins

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